



# City of Loma Linda Official Report

Floyd Petersen, Mayor  
Stan Brauer, Mayor pro tempore  
Robert Christman, Councilmember  
Robert Ziprick, Councilmember  
Charles Umeda, Councilmember

COUNCIL AGENDA: April 18, 2006

TO: City Council

VIA: Dennis R. Hallaway, City Manager

FROM: Diana De Anda, Finance Director

SUBJECT: Authorize execution of agreement with Revenue & Cost Specialists, LLC (RCS).

## **RECOMMENDATION**

Authorize City Manager to execute agreement with RCS to update the City's Development Impact Fee Nexus and Calculation Study.

## **BACKGROUND**

On October 26, 2004, City Council adopted Resolution No.2358 pertaining to the Development Impact Fees based on the Master Facilities Plan (MFP) and the Development Impact Fee (DIF) Calculation and Nexus Reports prepared by RCS. Prior to this study the Development Impact Fees had not been increase since September of 1992, with the exception of the Water Development Fee which was updated in September of 2003. In order to maintain the study adopted in 2004, an update was budgeted to be performed in the current fiscal year for changes in necessary public facilities and cost of construction.

The proposed scope of services and fee for services are presented in the letter dated March 14, 2006, from RCS; and has been incorporated into the contractual service agreement.

## **ENVIRONMENTAL**

None

## **FINANCIAL IMPACT**

The proposed update will cost \$16,610, which was included in the 2005/06 Fiscal Year Budget - 60% from General Fund (01), 10% from Sewer Fund (05) and 30% from Water Fund (65).

## CONTRACTUAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this 6<sup>th</sup> day of April 2006, by and between THE CITY OF LOMA LINDA, a Municipal Corporation (hereinafter referred to as "CITY") and Revenue & Cost Specialists, LLC, a California corporation (hereinafter referred to as "CONTRACTOR").

### A. RECITALS

1. CITY has heretofore requested of CONTRACTOR the performance of services with respect to updating the City's development impact fees study ("PROJECT" hereinafter);
2. CONTRACTOR has now submitted its proposal for the performance of such services;
3. CITY desires to retain CONTRACTOR to perform the services necessary to render advice and assistance to CITY relating to the PROJECT;
4. CONTRACTOR represents that it is qualified to perform such services and is willing to perform such services as hereinafter defined.

NOW, THEREFORE, IT IS AGREED by and between CITY and CONTRACTOR as follows:

### B. AGREEMENT

1. Definitions: The following definitions shall apply to the following terms, except where the context of this Agreement otherwise requires:

a. PROJECT: The Proposed Scope of Services described in CONTRACTOR'S Letter dated March 14, 2006, Re: Cost Update of the City's Development Impact Fee Nexus and Calculation Study; and which are made a part hereof;

b. SCOPE OF SERVICES: Such services as are necessary to be performed by CONTRACTOR in order to complete the WORK;

c. COMPLETION OF PROJECT: The PROJECT shall be completed by June 30, 2006;

2. CONTRACTOR agrees as follows:

a. CONTRACTOR shall forthwith undertake and complete the PROJECT in accordance to applicable Federal, State and CITY statutes, regulations, ordinances and guidelines, all to the reasonable satisfaction of the CITY.

b. CONTRACTOR shall at CONTRACTOR'S sole cost and expense, secure and hire such other persons as may, in the opinion of CONTRACTOR, be necessary to comply with the terms of this Agreement. In the event any such other persons are retained by CONTRACTOR, CONTRACTOR hereby warrants that such other persons shall be fully qualified to perform services required hereunder.

c. CONTRACTOR shall, at CONTRACTOR'S sole cost and expense, secure the required issuance of a City Business License as a condition precedent to being engaged as a CONTRACTOR within the CITY.

3. CITY agrees as follows:

a. To pay to CONTRACTOR a maximum sum Sixteen Thousand Six Hundred and Ten Dollars (\$16,610), which sum shall cover the cost of all direct and indirect costs or fees, including the work of employees and consultants of CONTRACTOR. Payment to CONTRACTOR, by CITY, shall be made in accordance with the provisions set forth in the specifications for said project.

b. Additional Services: Payments for additional services requested, in writing, by CITY, and not included in the Scope of Services shall be paid on a compensation basis in accordance with compensation rates agreed to by CITY. Charges for additional services shall be invoiced on a monthly basis and shall be paid by CITY within a reasonable time after said invoices are received by CITY.

4. CITY agrees to provide to CONTRACTOR:

a. Information and assistance related to Scope of Services;

b. Copies of information, if available, which CONTRACTOR considers necessary in order to complete the Project;

c. Such information as is generally available from CITY files applicable to the Project;

d. Assistance, if necessary, in obtaining information from other governmental agencies and/or private parties. However, it shall be CONTRACTOR'S responsibility to make all initial contact with respect to the gathering of such information.

5. Ownership of Documents: All documents, data, studies, photographs and reports prepared by CONTRACTOR pursuant to this Agreement shall be considered the property of the CITY and, upon payment for services performed by CONTRACTOR, such documents and other identified materials shall be delivered to CITY by CONTRACTOR. CONTRACTOR may, however, make and retain such copies of said documents and materials as CONTRACTOR may desire.

6. Termination: This Agreement may be terminated by CITY upon the giving of written "Notice of Termination" to CONTRACTOR at least ten (10) days prior to the date of termination specified in said Notice. In the event this Agreement is so terminated, CONTRACTOR shall be compensated at CONTRACTOR'S applicable hourly rates on a pro rata basis with respect to the percentage of the PROJECT completed as of the date of termination. CONTRACTOR shall provide to CITY any and all documents, studies, photographs and reports, whether in draft or final form, prepared by CONTRACTOR as of the date of termination. CONTRACTOR may not terminate this Agreement except for cause.

7. Notices and Designated Representatives: Any and all notices, demands, invoices and written communications between the parties hereto shall be addressed as set forth in this Paragraph 7. The below-named individuals, furthermore, shall be those persons primarily

responsible for the performance by the parties under this Agreement:

CITY:

CITY OF LOMA LINDA

Name: Diana De Anda

Title: Finance Director

Address: 25541 Barton Road, Loma Linda, CA 92354

CONTRACTOR:

REVENUE & COST SPECIALISTS, LLC.

Name: Scott Thorpe

Title: Vice President

Address: 2545 E. Chapman Ave., Suite 103, Fullerton, CA 92831

Any such notices, demands, invoices or written communications, by mail, shall be deemed to have been received by the addressee forty-eight (48) hours after deposit thereof in the United States Mail, postage prepaid, and property addressed as set forth above.

8. Insurance: CONTRACTOR shall neither commence work under this Agreement until it has obtained all insurance required hereunder in a company or companies acceptable to CITY nor shall CONTRACTOR allow any employee to commence work on the PROJECT until all insurance required has been obtained. CONTRACTOR shall take out and maintain at all times during the term of this Agreement the following policies of insurance:

a. Workers' Compensation Insurance: Before beginning work, CONTRACTOR shall furnish to CITY a Certificate of Insurance as proof that it has taken out full Workers' Compensation Insurance for all persons whom it may employ directly or through subcontractors in carrying out the work specified herein, in accordance with the laws of the State of California.

In accordance with the provisions of California Labor Code, Section 3700, every employer shall secure the payment of compensation to his employees. CONTRACTOR shall, prior to commencing work, sign and file with CITY a certification as follows:

I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this Agreement."

b. Public Liability and Property Damage: Throughout the term of this Agreement, at CONTRACTOR'S sole cost and expense, CONTRACTOR shall keep, or cause to be kept, in full force and effect, for the mutual benefit of CITY and CONTRACTOR, comprehensive, broad form, general public liability and automobile insurance against claims and liabilities for personal injury, death, or property damage arising from CONTRACTOR'S activities, providing protection of at least One Million Dollars (\$1,000,000.00) for bodily injury or death to any one person or for any one accident or occurrence, and at least One Million Dollars (\$1,000,000.00) for property damage.

c. General Insurance Requirements: All insurance required by express provision of this Agreement shall be carried only in responsible insurance companies licensed to do business in the State of California and policies required under Paragraph 8b shall name, as additional insured, CITY, its elected officials, officers, employees, and agents. All policies shall contain language, to the extent obtainable, to the effect that (1) the insurer, insured and all subcontractors waive the right of subrogation against CITY and CITY'S elected officials, officers, employees, and agents; (2) the policies are primary and noncontributing with any insurance that may be carried by CITY; and (3) they cannot be canceled or materially changed except after thirty (30) days' written notice by the insurer to CITY by certified mail. CONTRACTOR shall furnish CITY with copies of all such policies promptly upon receipt of them, or certificate evidencing the insurance. CONTRACTOR may effect for its own account insurance not required under this Agreement.

9. Indemnification: CONTRACTOR shall defend, indemnify and save harmless CITY, its elected and appointed officials, officers, agents and employees from all liability from loss, damage, or injury to persons or property, including the payment by CONTRACTOR of any and all legal costs and attorneys' fees, in any manner arising out of any negligent or intentional or willful acts or omissions of CONTRACTOR in the performance of this Agreement, including, but not limited to, all consequential damages to the maximum extent permitted by law. Said indemnification shall include any claim that CONTRACTOR, or CONTRACTOR's employees or agents, are considered to be employees of the CITY or are entitled to any employee benefits from CITY, including but not limited to those available under Public Employees Retirement Law.

10. Assignment: No assignment of this Agreement or of any part or obligation of performance hereunder shall be made, either in whole or in part, by CONTRACTOR without the prior written consent of CITY.

11. Independent Contractor: The parties hereto agree that CONTRACTOR and its employees, officers, and agents are independent contractors under this Agreement and shall not be construed to be employees of CITY for any purpose, including eligibility under Public Employees Retirement Law.

12. Compliance With Laws: CONTRACTOR shall comply with all applicable laws in performing its obligations under this Agreement.

13. Confidentiality: Information and materials obtained by the CONTRACTOR from CITY during the performance of this Agreement shall be treated as strictly confidential and shall not be used by the CONTRACTOR for any purpose other than the performance of this Agreement.

14. Discrimination: The CONTRACTOR agrees that no person shall be excluded from employment in the performance of this Agreement on grounds of race, creed, color, sex, age, marital status, or place of national origin. In this connection, the CONTRACTOR agrees to comply with all County, State and Federal laws relating to equal employment opportunity rights.

15. Government Law: This Agreement shall be governed by and construed in accordance with the laws of the State of California.

16. Attorneys' Fees: In the event any legal proceeding is instituted to enforce any term or provision of this Agreement, the prevailing party in said legal proceeding shall be entitled to recover attorneys' fees and costs from the opposing party in an amount determined by the Court to be reasonable.

17. Entire Agreement: This Agreement supersedes any and all other agreements, either oral or in writing, between the parties with respect to the subject matter herein. Each party to this Agreement acknowledges that no representation by any party which is not embodied herein nor any other agreement, statement, or promise not contained in this Agreement shall be valid or binding. Any modification of this Agreement shall be effective only as it is in writing, signed by all parties.

IN WITNESS WHEREOF, the parties hereto execute this Agreement as of the day and year first set forth above.

CONTRACTOR:  
Revenue & Cost Specialists, LLC.

CITY:  
City of Loma Linda, A Municipal Corporation

By: \_\_\_\_\_  
Scott Thorpe

By: \_\_\_\_\_  
Dennis Halloway

Title: Vice President

Title: City Manager

ATTEST:

\_\_\_\_\_  
Pamela Byrnes-O'Camb, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Richard E. Holdaway, City Attorney

## WORKERS' COMPENSATION INSURANCE CERTIFICATION

I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this Agreement.

\_\_\_\_\_  
Signature

Dated: \_\_\_\_\_



*Serving Local Governments Since 1975*

March 14, 2006

Ms. Diana De Anda  
Finance Director  
City of Loma Linda - Civic Center  
25541 Barton Road  
Loma Linda, CA 92354

*RE: Cost Update of the City's Development Impact Fee Nexus and Calculation Study*

Ms. De Anda,

You have indicated that you wish my assistance in updating the City's Development Impact Fees to reflect:

- The increased costs of public construction projects since the calculation and adoption of the existing fees.
- The current cost of acquiring land for required public facilities since the same time.
- The addition of projects not previously identified or the elimination of projects not needed.
- Any major changes to the proposed land-use database to reflect changes to the City's General Plan or to the densities of private projects typically approved.
- Assistance in calculating an impact fee for the expansion of the City's cable system into various parts of the community.

**Proposed Scope of Services:** RCS staff, which would be limited to me, would increase all existing projects by either the *Engineering News Record* Construction Cost Index, the Building Cost Index, depending upon the infrastructure, or to a specific recalculation conducted by staff. The same increase would be applied to the existing assets in order to maintain parity for the proportionality test between what is needed and what currently exists. RCS staff would also increase the costs of land acquisition where necessary (i.e. parks, streets right-of-way, etc.) to recognize that land costs in the City have changed, most likely increased.

Internet: [www.revenuecost.com](http://www.revenuecost.com)

Voice 714.992.9020

2545 E. Chapman Avenue • Suite 103 • Fullerton, CA 92831

Fax 714.992.9021



RCS would undertake the following specific steps:

1. Meet with staff and central management to roughly identify what changes are appropriate and necessary to maintain development impact fees that bear a reasonable relationship to the costs required to accommodate new development.
2. Meet with Community development staff to determine if any changes to the land-use database (Table 2-1) are warranted.
3. Meet with staff from Public Safety, Public Works-Engineering, Facilities Management and any others to review the list of existing projects to determine their continued viability and need. Add to that list any additional projects that had here-to-for been unidentified. The addition of projects to the Master Facilities Plan list is not uncommon after the first major development impact fee effort.
4. Review all existing project cost estimates and either increase them by the appropriate Engineering News Record cost indices or by new figures supplied by staff. Indicate what change have been made to each project on the individual master Facilities Plan detail pages.
5. Recalculate all development impact fees and assist in the calculation of the City's cable communication infrastructure (new impact fee and chapter).
6. Rewrite the textual nexus Report to reflect all of the changes made to the project lists and the resulting impact fees.
7. Meet with staff, including the City Attorney, to review their comments/questions on the draft Master Facilities Plan and the draft Development Impact Fee Nexus Report.
8. Complete the final two Reports and provide the City with a master copy of each and cover/letterhead stock adequate for 30 copies.
9. Attend up to four meetings, one with the development community, one workshop with the City Council and up to two public hearings.

**Fee for Services.** RCS will undertake the previously described scope of services for a flat rate of \$16,110 plus travel costs/commercial shipping (not to exceed \$500) for a total not-to-exceed proposal amount of \$16,610. A signature at the end of this document is all we need for our purposes or the City could prepare a contract for signature.

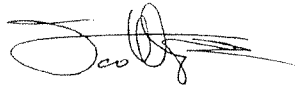
The City would receive a three invoices, one at the provision of the draft Master Facilities Plan, one at the provision of the draft DIF Report and one at the provision of the final report stage.

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*March 14, 2006 Letter to Diana De Anda, City of Loma Linda*

I look forward to assisting the City maintaining its existing impact fees. Should you have any questions, please call me at 714/992-9026.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Thorpe", with a stylized flourish extending to the right.

Scott Thorpe  
Senior Vice President

Agreed to terms and conditions:

\_\_\_\_\_  
Signature

/      /06

\_\_\_\_\_  
Name/Title